

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR DIVISION**

INTRA AGENCY MEMORANDUM

TO: File

FROM: Mary E. Major
Environmental Program Manager

SUBJECT: Meeting Minutes - Technical Advisory Committee Concerning Qualified Energy Generators using Biomass (Rev. Cg)

DATE: August 12, 2009

INTRODUCTION

At 10:00 a.m., August 12, 2009, a meeting of the technical advisory committee concerning qualified energy generators using biomass was held in the 2nd Floor Conference Room, Department of Environmental Quality, 629 E. Main Street, Richmond, Virginia. A record of meeting attendees is attached.

SUMMARY OF DISCUSSION

The group received the contents of the Advisory Group Protocol and reviewed the regulatory process and the group's specific role in that process. Staff reviewed the contents of the document titled the Biomass General Permit - Draft 1. It was explained that the straw man was just a starting point for the group discussions and highlighted the many complexities inherent in the development of the general permit.

DOCUMENT DISTRIBUTION

The following documents were distributed to the committee prior to or at the meeting:

1. Biomass General Permit Working Document - Draft 1.
2. Advisory Group Protocol.

TEMPLATES\GEN-PERMIT\GP08
REG\GEN-DEV\Cg-GP08-1

Attachments

**Attachment 1
Attendance Record**

**COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD**

**TECHNICAL ADVISORY COMMITTEE MEETING
ATTENDANCE RECORD**

August 12, 2009

SUBJECT: Biomass General Permit for Qualified Energy Generator (Revisor CG)

LOCATION: 2nd Floor Conference Room, Department of Environmental Quality, 629 East Main Street, Richmond, Virginia

PRINTED NAME	SIGNATURE
Ken Moss	<i>Ken Moss</i>
Bill Pardon	<i>Bill Pardon</i>
Mark Remaley Sharon Foley	<i>Mark Remaley Sharon Foley</i>
MATT FAUCONIER Donna Wirth	<i>Matt Faulconier Donna Wirth</i>
Kathleen VanDerbyde Lou Hestek	<i>Kathleen VanDerbyde Lou Hestek</i>
RANDY BUSH Becky Remick Patricia Brunner	<i>Randy Bush Becky Remick Patricia Brunner</i>
Freddie Wydner Jeff Steers	<i>Freddie Wydner Jeff Steers</i>
Jerome Brooks	<i>Jerome Brooks</i>

Attachment 2

Biomass General Permit Working Document- Draft 1

Applicability:

- A. The affected unit to which this chapter applies is each qualified energy generator for which construction or operation is commenced after the issue date of this general permit and that meets the requirements stated below:
 - a. A maximum design heat input capacity of 30 million British thermal units per hour (MMBtu/hr) or less;
 - b. Burns natural gas, distillate oil, and/or biomass.
- B. Internal combustion (IC) engines, incinerators, pyrolysis units, and gasification units are not eligible for this general permit.
- C. Any energy generator that is a major source, as defined in 9 VAC 5-80-1615, is not eligible for this general permit.
- D. Any energy generator that is located at a major source, as defined in 9 VAC 5-80-1615, is not eligible for this general permit.
- E. Any energy generator that burns municipal solid waste and/or biosolids (i.e. sewage sludge) is not eligible for this general permit.

Definitions:

"Biomass" means organic material that is available on a renewable or recurring basis, including:

1. Forest-related materials, including mill residues, logging residues, forest thinning, slash, brush, low-commercial value materials or undesirable species, and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement;
2. Agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws, aquatic plants and agricultural processed co-products and waste products, including fats, oils, greases, whey, and lactose;
3. Animal waste, including manure and slaughterhouse and other animal processing waste;
4. Solid woody waste materials, including landscape trimmings, waste pallets, crates and manufacturing, construction, and demolition wood wastes, excluding pressure-treated, chemically treated or painted wood wastes and wood contaminated with plastic;

5. Crops and trees planted for the purpose of being used to produce energy;

6. Landfill gas, wastewater treatment gas, and biosolids, including organic waste byproducts generated during the wastewater treatment process; and

7. Municipal solid waste, excluding tires and medical and hazardous waste.

"Biosolids" means a sewage sludge that has received an established treatment for required pathogen control and is treated or managed to reduce vector attraction to a satisfactory level and contains acceptable levels of pollutants, such that it is acceptable for use for land application, marketing, or distribution in accordance with 12 VAC 5-585, Biosolids Use Regulations.

"Permittee" means the owner of a facility covered under this general permit.

"Qualified energy generator" means a commercial facility located in the Commonwealth with the capacity annually to generate no more than five megawatts of electricity, or produce the equivalent amount of energy in the form of fuel, steam, or other energy product, that is generated or produced solely from biomass, and that is sold to an unrelated person or stationary source or used in a manufacturing process.

"Refuse" means all solid waste products having the characteristics of solids rather than liquids and which are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination or other discarded materials.

"State operating permit" means a permit issued under the state operating permit program.

Emission Standards

- A. The permittee shall not cause or allow to be discharged into the atmosphere from any aggregated covered emissions units any emissions in excess of the limits specified below:

Pollutant ¹	Combined Units ² (tons/yr)
PM	25
PM-10	15
PM 2.5	10
NO _x	40
SO ₂	40
CO	100
VOC	40

¹ The PM, PM-10, and PM 2.5 limits contain filterable and condensable particulates.

² Combined units include the qualified energy generator and any fuel

preparation/storage emission units.

- B. The permittee shall not cause or allow to be discharged into the atmosphere from any aggregated covered emissions units any emissions in excess of the limits specified below:

CAS Number	HAP Name	HAP Classification	Hourly Emission Limit (lbs/hr)	Annual Emission Limit (tons/yr)
50000	Formaldehyde	VOC	0.0825	0.174
51285	2,4-Dinitrophenol	VOC	0.0066	0.0145
51796	Ethyl carbamate (Urethane)	VOC	----	----
53963	2-Acetylaminofluorene	VOC	----	----
56235	Carbon tetrachloride	VOC	2.046	4.495
56382	Parathion	VOC	0.0066	0.0145
57147	1,1-Dimethyl hydrazine	VOC	0.0792	0.174
57578	beta-Propiolactone	VOC	0.099	0.2175
57749	Chlordane	VOC	0.033	0.0725
58899	Lindane (all isomers)	VOC	0.033	0.0725
59892	N-Nitrosomorpholine	VOC	----	----
60117	4-Dimethyl aminoazobenzene	VOC	----	----
60344	Methyl hydrazine	VOC	0.01254	----
60355	Acetamide	VOC	2.112	4.64
62533	Aniline	VOC	0.5016	1.102
62737	Dichlorvos	VOC	0.0594	0.1305
62759	N-Nitrosodimethylamine	VOC	0.003142	5.18 E-5
63252	Carbaryl	VOC	0.33	0.725
64675	Diethyl sulfate	VOC	0.165	0.3625
67561	Methanol	VOC	10.824	28.8
67663	Chloroform	VOC	3.234	7.105
67721	Hexachloroethane	VOC	0.6402	1.4065
68122	Dimethyl formamide	VOC	1.98	4.35
71432	Benzene (inc. from gasoline)	VOC	2.112	4.64
71556	Methyl chloroform (1,1,1-Trichloroethane)	Neither	22.8	9.9
72435	Methoxychlor	VOC	0.66	1.45
72559	DDE (1,1-dichloro-2,2-bis(p-chlorophenyl) ethylene)	VOC	----	----
74839	Methyl bromide (Bromomethane)	VOC	1.254	2.755
74873	Methyl chloride (Chloromethane)	VOC	6.831	9.9
74884	Methyl iodide (Iodomethane)	VOC	0.792	1.74
75003	Ethyl chloride (Chloroethane)	VOC	22.8	9.9

CAS Number	HAP Name	HAP Classification	Hourly Emission Limit (lbs/hr)	Annual Emission Limit (tons/yr)
75014	Vinyl chloride	VOC	0.858	1.885
75058	Acetonitrile	VOC	3.333	9.715
75070	Acetaldehyde	VOC	8.91	9.9
75092	Methylene Chloride (Dichloromethane)	Neither	11.484	9.9
75150	Carbon disulfide	VOC	2.046	4.495
75218	Ethylene oxide	VOC	0.1188	0.261
75252	Bromoform	VOC	0.3432	0.754
75343	Ethylidene dichloride (1,1 Dichloroethane)	VOC	22.8	9.9
75354	Vinylidene chloride (1,1,-Dichloroethylene)	VOC	2.607	2.9
75445	Phosgene	VOC	0.0264	0.058
75558	1,2-Propyleneimine (2-Methyl aziridine)	VOC	0.3102	0.6815
75569	Propylene oxide	VOC	3.168	6.96
76448	Heptachlor	VOC	0.033	0.0725
77474	Hexachlorocyclopentadiene	VOC	0.00726	0.01595
77781	Dimethyl sulfate	VOC	0.03432	0.0754
78591	Isophorone	VOC	0.924	----
78875	Propylene dichloride (1,2-Dichloropropane)	VOC	16.764	9.9
79005	1,1,2-Trichloroethane	VOC	3.63	7.975
79016	Trichloroethylene	VOC	22.8	9.9
79061	Acrylamide	VOC	0.00198	0.00435
79107	Acrylic Acid	VOC	0.3894	0.8555
79118	Chloroacetic acid	VOC	----	----
79345	1,1,2,2-Tetrachloroethane	VOC	0.4554	1.0005
79447	Dimethyl carbamoyl chloride	VOC	----	----
79469	2-Nitropropane	VOC	2.376	5.22
80626	Methyl methacrylate	VOC	22.8	9.9
82688	Pentachloronitrobenzene (Quintobenzene)	VOC	0.033	0.0725
84742	Dibutyl phthalate	VOC	0.33	0.725
85449	Phthalic anhydride	VOC	0.4026	0.8845
87683	Hexachlorobutadiene	VOC	0.01386	0.03045
87865	Pentachlorophenol	VOC	0.033	0.0725
88062	2,4,6- Trichlorophenol	VOC	0.02046	0.04495
91203	Naphthalene	VOC	2.607	7.54
91225	Quinoline	VOC	----	----
91941	3,3'- Dichlorobenzidene	VOC	0.002561	0.005626
92524	Biphenyl	VOC	0.0858	0.1885
92671	4-Aminobiphenyl	VOC	----	----
92875	Benzidine	VOC	0.016724	1.08E-05

CAS Number	HAP Name	HAP Classification	Hourly Emission Limit (lbs/hr)	Annual Emission Limit (tons/yr)
92933	4-Nitrodiphenyl	VOC	----	----
94757	2,4-D (2,4-Dichlorophenoxyacetic Acid) salts and esters	VOC	----	----
95476	o-Xylene	VOC	21.483	9.9
95487	o-Cresol	VOC	1.452	3.19
95534	o-Toluidine	VOC	0.5808	1.276
95807	2,4- Toluene diamine	VOC	0.0066	0.0145
95954	2,4,5- Trichlorophenol	VOC	3.3	7.25
96093	Styrene oxide	VOC	----	----
96128	1,2- Dibromo-3- chloropropane	VOC	----	----
96457	Ethylene thiourea	VOC	----	----
98077	Benzotrichloride	VOC	0.0264	----
98828	Cumene	VOC	16.236	9.9
98862	Acetophenone	VOC	3.243	7.125
98953	Nitrobenzene	VOC	0.33	0.725
100027	4-Nitrophenol	VOC	0.066	0.145
100414	Ethyl benzene	VOC	17.919	9.9
100425	Styrene	VOC	14.058	9.9
100447	Benzyl chloride	VOC	0.3432	0.754
101144	4,4'-Methylene bis (2-chloroaniline)	VOC	0.01452	0.0319
101688	Methylene diphenyl diisocyanate (MDI)	VOC	0.003366	0.007395
101779	4,4- Methylene dianiline	VOC	0.05346	0.11745
106423	p-Xylene	VOC	21.483	9.9
106445	p-Cresol	VOC	1.452	3.19
106467	1,4-Dichlorobenzene(p)	VOC	21.813	9.9
106503	p-Phenylenediamine	VOC	0.0066	0.0145
106514	Quinone	VOC	0.02904	0.0638
106887	1,2-Epoxybutane	VOC	1.3596	2.987
106898	Epichlorohydrin (1-Chloro-2, 3- epoxypropane)	VOC	0.5016	1.102
106934	Ethylene dibromide (Dibromoethane)	VOC	0.033	0.05017
106990	1,3 Butadiene	VOC	1.452	3.19
107028	Acrolein	VOC	0.02277	0.03335
107051	Allyl chloride	VOC	0.198	0.435
107062	Ethylene dichloride (1,2 -Dichloroethane)	VOC	2.64	5.8
107131	Acrylonitrile	VOC	0.2838	0.6235

CAS Number	HAP Name	HAP Classification	Hourly Emission Limit (lbs/hr)	Annual Emission Limit (tons/yr)
107211	Ethylene glycol	VOC	4.191	----
107302	Chloromethyl methyl ether	VOC	----	----
108054	Vinyl acetate	VOC	2.31	5.075
108101	Methyl isobutyl ketone (Hexone)	VOC	10.131	9.9
108316	Maleic anhydride	VOC	0.066	0.145
108383	m-Xylene	VOC	21.483	9.9
108394	m-Cresol	VOC	1.452	3.19
108883	Toluene	VOC	18.645	9.9
108907	Chlorobenzene	VOC	3.036	6.67
108952	Phenol	VOC	1.254	2.755
109591	Isopropoxyethanol	VOC	6.996	9.9
109864	2-Methoxyethanol	VOC	1.188	2.61
110543	Hexane	VOC	11.616	9.9
110805	2-Ethoxyethanol	VOC	1.782	3.915
111422	Diethanolamine	VOC	0.858	1.885
111444	Dichloroethyl ether (Bis(2-chlorethyl)ether)	VOC	1.914	4.205
114261	Propoxur (Baygon)	VOC	0.033	0.0725
117817	Bis(2-ethylhexyl) phthalate	VOC	----	----
118741	Hexachlorobenzene	VOC	0.000132	0.00029
119904	3,3 Dimethoxybenzidine	VOC	----	----
119937	3,3'-Dimethyl benzidine	VOC	0.00066	----
120809	Catechol	VOC	1.518	3.335
120821	1,2,4-Trichlorobenzene	VOC	1.221	1
121142	2,4-Dinitrotoluene	VOC	0.099	0.218
121448	Triethylamine	VOC	2.046	5.945
121697	N,N- Dimethylaniline	VOC	1.65	3.625
122667	1,2-Diphenylhydrazine	VOC	0.000257	0.000566
123319	Hydroquinone	VOC	0.132	0.29
123386	Propionaldehyde	VOC	----	----
123911	1,4-Dioxane (1,4-Diethyleneoxide)	VOC	5.94	9.9
126998	Chloroprene	VOC	2.376	5.22
127184	Tetrachloroethylene (Perchloroethylene)	Neither	22.8	9.9
131113	Dimethyl phthalate	VOC	0.33	0.725
132649	Dibenzofurans	VOC	9.9 E-5	2.18 E-4
133062	Captan	VOC	0.33	0.725
133904	Chloramben	VOC	----	----
140885	Ethyl acrylate	VOC	2.013	2.9
151564	Ethylenimine (Aziridine)	VOC	0.05808	0.1276
156627	Calcium cyanamide	VOC	0.033	0.0725
302012	Hydrazine	Neither	0.00858	0.01885

CAS Number	HAP Name	HAP Classification	Hourly Emission Limit (lbs/hr)	Annual Emission Limit (tons/yr)
334883	Diazomethane	VOC	0.02244	0.0493
463581	Carbonyl sulfide	VOC	0.0528	0.116
510156	Chlorobenzilate	VOC	----	----
532274	2-Chloroacetophenone	VOC	0.02112	0.0464
534521	4,6-Dinitro-o-cresol, and salts	VOC	0.0132	0.029
540841	2,2,4- Trimethylpentane	VOC	22.8	9.9
542756	1,3-Dichloropropene	VOC	0.297	0.6525
542881	Bis(chloromethyl) ether	VOC	0.00033	0.000725
584849	2,4- Toluene diisocyanate	VOC	0.00462	0.00522
593602	Vinyl bromide	VOC	1.452	3.19
624839	Methyl isocyanate	VOC	0.003102	0.006815
680319	Hexamethyl phosphoroamide	VOC	----	----
684935	N-Nitroso-N-methylurea	VOC	----	----
822060	Hexamethylene-1,6-diisocyanate	VOC	0.002244	0.00493
1120714	1,3- Propane sultone	VOC	----	----
1319773	Cresols/Cresylic acid (isomers and mixture)	VOC	1.452	3.19
1330207	Xylenes (isomers and mixture)	VOC	21.483	9.9
1336363	Polychlorinated biphenyls (Aroclors)	VOC	0.033	0.0725
1582098	Trifluralin	VOC	----	----
1634044	Methyl tert butyl ether	VOC	9.5	9.9
1746016	2,3,7,8- Tetrachlorodibenzo-p-dioxin	VOC	----	----
7550450	Titanium tetrachloride	Neither	----	----
7647010	Hydrochloric acid (Hydrogen Chloride)	Neither	0.2475	----
7664393	Hydrofluoric acid (Hydrogen Fluoride)	Neither	0.0858	----
7723140	Phosphorous	PM	0.0066	0.0145
7882505	Chlorine	Neither	0.0957	0.2175
7803512	Phosphine	Neither	0.0462	0.0609
8001352	Toxaphene (chlorinated camphene)	VOC	0.033	0.0725
29191524	0-Anisidine	VOC	0.033	0.0725
COMPOUNDS				
7439921	Lead compounds ^{1,5}	PM	0.0099	0.02175
7439965	Manganese compounds ^{1,5}	PM	0.33	0.725
7439976	Mercury compounds ^{1,5} (Alkyl)	PM	0.00099	0.00145

CAS Number	HAP Name	HAP Classification	Hourly Emission Limit (lbs/hr)	Annual Emission Limit (tons/yr)
	(Aryl & inorganic)	PM	0.0066	0.0145
	(All other forms)	PM	0.0033	0.00725
7440020	Nickel Compounds ^{1,5} (Soluble)	PM	0.0066	0.0145
	(Insoluble)	PM	0.066	0.145
7440439	Cadmium compounds ^{1,5}	PM	0.0033	0.00725
7440473	Chromium II & III compounds ^{1,5}	PM	0.033	0.0725
7440473	Chromium VI compounds ^{1,5}	PM	0.0033	0.00725
7758976	Lead chromate (Pb) ⁵	PM	0.0033	0.00725
7758976	Lead chromate (Cr) ⁵	PM	0.00079	0.00174
7782492	Selenium compounds ^{1,5}	PM	0.0132	0.029
----	Cobalt compounds ^{1,5}	PM	0.0033	0.00725
----	Coke oven emissions	VOC	0.0132	0.029
----	Cyanide compounds ^{1,2,5}	VOC	0.33	0.725
----	Glycol ethers ^{1,3,5}	VOC	----	----
----	Polycyclic organic matter ^{4,5}	VOC	----	----

¹ For all listings above which contain the word “compounds” and for the glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of that chemical’s infrastructure.

² X’CN where X = H’ or any other group where formal dissociation may occur. For example, KCN or Ca(CN)₂.

³ Glycol ethers include mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH₂CH₂)_n-OR’ where:

n = 1, 2, or 3
R = alkyl C7 or less, or phenyl or alkyl substituted phenyl
R’ = H, or alkyl C7 or less, or carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate

2-Ethoxyethanol, Isopropoxyethanol, and 2-Methoxyethanol meet this definition, but are considered as only one HAP (glycol ethers) for Title V and CAAA §112 purposes. They are also listed individually in this table as a reminder that because they have TLVs, they must be considered separately under Virginia’s Toxic Pollutant regulations (9 VAC 5 Chapter 60, Articles 4 and 5).

⁴ Includes substituted and/or unsubstituted polycyclic aromatic hydrocarbons and aromatic heterocycle compounds, with two or more fused rings, at least one of which

is benzenoid in structure. Polycyclic Organic Matter is a mixture of organic compounds containing one or more of these polycyclic aromatic chemicals which include dioxins and furans. Polycyclic Organic Matter is generally formed or emitted during thermal processes including (1) incomplete combustion, (2) pyrolysis, (3) the volatilization, distillation or processing of fossil fuels or bitumens, or (4) the distillation or thermal processing of non-fossil fuels.

⁵ Emissions for pollutant listings which do not have a specific CAS number must be totaled when determining major source applicability under Title V and for HAP regulations (i.e. 112(g) & (d)).

- C. Hazardous air pollutant (HAP) emissions, as defined by §112(b) of the Clean Air Act, from any aggregated covered emissions units shall not exceed 10 tons per year of any individual HAP or 25 tons per year of any combination, calculated monthly as the sum of each consecutive 12 month period.
- D. The standard for visible emissions shall be as follows:
 - a. Visible emissions from each qualified energy generator and any fuel preparation/storage emission units shall not exceed 5 percent opacity as determined by the EPA Method 9 (reference 40 CFR 60, Appendix A).
 - b. The opacity standards prescribed under this subsection shall apply at all times except during periods of startup, shutdown, and malfunction.
- E. No permittee of an affected unit shall combust fuel in the affected unit that contains greater than 0.05 weight percent sulfur.

Gaseous Fuels

- A. **Emission Limits** - The permittee shall not cause or allow to be discharged into the atmosphere from any qualified energy generator any emissions in excess of the limits specified below:

Pollutant	Emission Limit (lbs/10⁶ scf)
PM	7.6
PM-10	7.6
PM 2.5	7.6
NO _x	100
SO ₂	0.6
CO	84
VOC	5.5

- B. **Initial Testing** - Initial performance tests shall be conducted for all criteria pollutants (PM, PM-10, PM 2.5, NO_x, SO₂, CO, and VOC) and metal HAPs (all particulate compounds listed in 9 VAC 5-520-190 B) from the qualified energy generator stack to determine compliance with the emission limits contained in paragraph A of this section and hourly emission limits listed in 9 VAC 5-520-190 B. The tests shall be performed

and demonstrate compliance within 60 days after achieving the maximum production rate at which the facility will be operated but in no event later than 180 days after start-up of the permitted facility. Tests shall be conducted and reported and data reduced as set forth in 9 VAC 5-50-30 and 9 VAC 5-60-30, and the test methods and procedures contained in each applicable section or subpart listed in 9 VAC 5-50-410 and 9 VAC 5-60-70. The details of the tests are to be arranged with the Regional Office. The permittee shall submit a test protocol at least 30 days prior to testing. One copy of the test results shall be submitted to the Regional Office within 60 days after test completion and shall conform to the test report format enclosed with this general permit.

Alternatively, the Regional Office may waive the requirement for testing if the permittee demonstrates by other means to the board's satisfaction that emissions from the qualified energy generator are in compliance with the emission limits contained in paragraph A of this section and hourly emission limits listed in 9 VAC 5-520-190 B.

- C. **Initial Testing** - Concurrently with the initial performance tests as stated in paragraph B of this section, Visible Emission Evaluations (VEE) in accordance with 40 CFR Part 60, Appendix A, Method 9, shall also be conducted by the permittee on the qualified energy generator. Each test shall consist of 30 sets of 24 consecutive observations (at 15 second intervals) to yield a six minute average. The details of the tests are to be arranged with the Regional Office. The permittee shall submit a test protocol at least 30 days prior to testing. The evaluation shall be performed and demonstrate compliance within 60 days after achieving the maximum production rate at which the facility will be operated but in no event later than 180 days after start-up of the permitted facility. Should conditions prevent concurrent opacity observations, the Regional Office shall be notified in writing, within seven days, and visible emissions testing shall be rescheduled within 30 days. Rescheduled testing shall be conducted under the same conditions (as possible) as the initial performance tests. One copy of the test result shall be submitted to the Regional Office within 60 days after test completion and shall conform to the test report format enclosed with this general permit.
- D. **Continuous Testing** - Every three years and upon request by the DEQ, the permittee shall conduct:
- a. Additional performance tests for all criteria pollutants and metal HAPs from the qualified energy generator stack to demonstrate compliance with the emission limits contained in paragraph A of this section and hourly emission limits listed in 9 VAC 5-520-190 B. The details of the tests shall be arranged with the Regional Office; and
 - b. Additional visible emission evaluations from the qualified energy generator stack to demonstrate compliance with the visible emission limit contained in 9 VAC 5-520-190 D of this general permit. The details of the tests shall be arranged with the Regional Office.
- E. **Exclusion to Testing** - Testing requirements listed in paragraphs B, C, and D of this section do not apply to qualified energy generators that burn only natural gas.

- F. **On Site Records** - The permittee shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with this general permit. The content and format of such records shall be arranged with the Regional Office. These records shall include, but are not limited to:
- a. Monthly and annual consumption of each gaseous fuel used, calculated monthly as the sum of each consecutive 12-month period. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months.
 - b. Material Safety Data Sheets (MSDS) for each gaseous biomass fuel used.
 - c. Scheduled and unscheduled maintenance and operator training.
 - d. Results of all stack tests, visible emission evaluations and performance evaluations.
 - e. Boiler information including make, model, serial number, model year, and maximum rated capacity (in MMBtu/hr).

Liquid Fuels

- A. **Emission Limits** - The permittee shall not cause or allow to be discharged into the atmosphere from any qualified energy generator any emissions in excess of the limits specified below:

Pollutant	Emission Limit (lbs/1000 gal)
PM	3.3
PM-10	1.00
PM 2.5	0.25
NO _x	20
SO ₂	7.1
CO	5
VOC	0.2

- B. **Fuel Certification** - If using distillate oil, the permittee shall obtain a certification from the fuel supplier with each shipment of distillate oil. Each fuel supplier certification shall include the following:
- a. The name of the fuel supplier;
 - b. The date on which the distillate oil was received;
 - c. The quantity of distillate oil delivered in the shipment;

- d. A statement that the distillate oil complies with the American Society for Testing and Materials specifications ASTM D396 for Grades 1 or 2 Low Sulfur fuel oil, and;
 - e. The sulfur content of the distillate oil.
- C. **Fuel Certification** - If using liquid biomass fuel, the permittee shall obtain a certification from the fuel supplier with each shipment of liquid biomass fuel. Each fuel supplier certification shall include the following:
- a. The name of the fuel supplier;
 - b. The potential sulfur emissions rate or maximum potential sulfur emissions rate of the fuel in ng/J heat input; and;
 - c. The method used to determine the potential sulfur emissions rate of the fuel.

Fuel sampling and analysis, independent of that used for certification, as may be periodically required or conducted by DEQ may be used to determine compliance with the fuel specifications stipulated in 9 VAC 5-520-190 E. Exceedance of these specifications may be considered credible evidence of the exceedance of emission limits.

- D. **Fuel Storage Tanks** – If the permittee retains fuel storage tanks on site to store distillate oil and/or liquid biomass fuel, each storage tank shall not have a capacity greater than or equal to 75 cubic meters (m³) (19,812 gallons).
- E. **Initial Testing** - Initial performance tests shall be conducted for all criteria pollutants (PM, PM-10, PM 2.5, NO_x, SO₂, CO, and VOC) and metal HAPs (all particulate compounds listed in 9 VAC 5-520-190 B) from the qualified energy generator stack to determine compliance with the emission limits contained in paragraph A of this section and hourly emission limits listed in 9 VAC 5-520-190 B. The tests shall be performed and demonstrate compliance within 60 days after achieving the maximum production rate at which the facility will be operated but in no event later than 180 days after start-up of the permitted facility. Tests shall be conducted and reported and data reduced as set forth in 9 VAC 5-50-30 and 9 VAC 5-60-30, and the test methods and procedures contained in each applicable section or subpart listed in 9 VAC 5-50-410 and 9 VAC 5-60-70. The details of the tests are to be arranged with the Regional Office. The permittee shall submit a test protocol at least 30 days prior to testing. One copy of the test results shall be submitted to the Regional Office within 60 days after test completion and shall conform to the test report format enclosed with this general permit.

Alternatively, the Regional Office may waive the requirement for testing if the permittee demonstrates by other means to the board's satisfaction that emissions from the qualified energy generator are in compliance with the emission limits contained in paragraph A of this section and hourly emission limits listed in 9 VAC 5-520-190 B.

- F. **Initial Testing** - Concurrently with the initial performance tests as stated in paragraph C of this section, Visible Emission Evaluations (VEE) in accordance with 40 CFR Part 60,

Appendix A, Method 9, shall also be conducted by the permittee on the qualified energy generator. Each test shall consist of 30 sets of 24 consecutive observations (at 15 second intervals) to yield a six minute average. The details of the tests are to be arranged with the Regional Office. The permittee shall submit a test protocol at least 30 days prior to testing. The evaluation shall be performed and demonstrate compliance within 60 days after achieving the maximum production rate at which the facility will be operated but in no event later than 180 days after start-up of the permitted facility. Should conditions prevent concurrent opacity observations, the Regional Office shall be notified in writing, within seven days, and visible emissions testing shall be rescheduled within 30 days. Rescheduled testing shall be conducted under the same conditions (as possible) as the initial performance tests. One copy of the test result shall be submitted to the Regional Office within 60 days after test completion and shall conform to the test report format enclosed with this general permit.

- G. **Continuous Testing** - Every three years and upon request by the DEQ, the permittee shall conduct:
- a. Additional performance tests for all criteria pollutants and metal HAPs from the qualified energy generator stack to demonstrate compliance with the emission limits contained in paragraph A of this section and hourly emission limits listed in 9 VAC 5-520-190 B. The details of the tests shall be arranged with the Regional Office; and
 - b. Additional visible emission evaluations from the qualified energy generator stack to demonstrate compliance with the visible emission limit contained in 9 VAC 5-520-190 D of this general permit. The details of the tests shall be arranged with the Regional Office.
- H. **Exclusion to Testing** - Testing requirements listed in paragraphs E, F, and G of this section do not apply to qualified energy generators that burn only distillate oil.
- I. **On Site Records** - The permittee shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with this general permit. The content and format of such records shall be arranged with the Regional Office. These records shall include, but are not limited to:
- a. Monthly and annual consumption of each liquid fuel used, calculated monthly as the sum of each consecutive 12-month period. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months.
 - b. Material Safety Data Sheets (MSDS) for each liquid biomass fuel used.
 - c. All fuel supplier certifications.
 - d. If the permittee retains fuel tanks on site, records of distillate oil and/or liquid biomass fuel stored in each tank, the period of storage, and the maximum true vapor pressure of each fuel during the respective storage period.

- e. Scheduled and unscheduled maintenance and operator training.
 - f. Results of all stack tests, visible emission evaluations, performance evaluations, and fuel sampling and analysis.
 - g. Boiler information including make, model, serial number, model year, and maximum rated capacity (in MMBtu/hr).
- J. **Semiannual Fuel Quality Reports** – The permittee shall submit fuel quality reports to the Regional Office, postmarked no later than the 30th day following the end of each semiannual period ending June 30th and December 31st. If no shipments of distillate oil and/or liquid biomass fuel were received during the semiannual period, the fuel quality report shall consist of the dates included in the semiannual period and a statement that no distillate oil and/or liquid biomass fuel was received during the semiannual period. If distillate oil and/or liquid biomass fuel was received during the reporting period, the report shall include:
- a. The dates included in the semiannual period;
 - b. A copy of all fuel supplier certifications for all shipments of distillate oil and/or liquid biomass fuel received during the reporting period, indicating the supplier, volume of shipment, sulfur content (weight percent) and date the shipment was received.
 - c. A signed statement from the owner or operator of the facility that the fuel supplier certifications represent all of the distillate oil and/or liquid biomass fuel received during the reporting period.

Solid Fuels

- A. The permittee shall not cause or allow to be discharged into the atmosphere from any qualified energy generator any emissions in excess of the limits specified below:

Pollutant³	Emission Limit Dry Fuel¹ (lbs/MMBtu)	Emission Limit Wet Fuel² (lbs/MMBtu)
PM	0.417	0.347
PM-10	0.36	0.29
PM 2.5	0.31	0.25
NO _x	0.49	0.22
SO ₂	0.025	0.025
CO	0.60	0.60
VOC	0.017	0.017

¹ Factors for dry fuel represent fuel with less than 20% moisture content.

² Factors for wet fuel represent fuel with 20% moisture content or greater.

³ PM-10 and PM 2.5 emission limits contain only filterable particulates.

- B. Emission Controls** - Particulate emissions from the qualified energy generator shall be controlled by a high efficiency multicyclone, baghouse, fabric filter, or equivalent control. The control device shall be provided with adequate access for inspection and shall be in operation when the qualified energy generator is operating.
- C. Emission Controls** – If the permittee is burning poultry litter, in addition to the particulate emission control device stated in paragraph B of this section, HAP emissions from the qualified energy generator shall be controlled by a wet scrubber, or equivalent. The wet scrubber shall be equipped with a flow meter showing the flow rate of scrubbing medium in gallons per minute. The permittee shall record the flow through the wet scrubber during operation once every 8 hours, at a minimum. Additionally, the permittee shall measure and record the pH of the scrubbing medium once every 8 hours, at a minimum. The permittee shall maintain the pH of the scrubbing medium to a level of 6.8 or greater. The control device shall be provided with adequate access for inspection and shall be in operation when the qualified energy generator is operating.
- D. Fugitive Dust and Emission Control** – Fugitive dust and emission controls shall include the following, or equivalent, as approved by DEQ:
- a. Installation and use of hoods, fans and fabric filters to enclose and vent the handling of dusty materials. Adequate containment methods shall be employed during sandblasting or other similar operations.
 - b. Open equipment for conveying or transporting materials likely to create objectionable air pollution when airborne shall be covered, or treated in an equally effective manner at all times when in motion.
 - c. Prompt removal of spilled or tracked dirt or other materials from paved streets and of dried sediments resulting from soil erosion.
 - d. Dust from material handling, stockpiles, and load-outs shall be controlled by wet suppression or equivalent. The wet suppression spray systems shall be operated at optimum design.
 - e. Reasonable precautions shall be taken to prevent deposition of dirt on public roads and subsequent dust emissions. Trucks leaving the site shall have clean wheels achieved by use of a wheel washer or equivalent. Dirt, product, or raw material spilled or tracked onto paved surfaces shall be promptly removed to prevent particulate matter from becoming airborne.
- E. Monitoring Devices** - The multicyclone, baghouse, fabric filter, or equivalent control shall be equipped with devices to continuously measure the differential pressure across the multicyclone, baghouse, fabric filter, or equivalent control. Each monitoring device shall be installed, maintained, calibrated and operated in accordance with approved procedures which shall include, as a minimum, the manufacturer's written requirements or recommendations. Each monitoring device shall be provided with adequate access

for inspection and shall be in operation when the multicyclone, baghouse, fabric filter, or equivalent control is operating.

- F. **Monitoring Device Observation** – To ensure good performance, the process/control monitoring device used to continuously measure the differential pressure across the multicyclone, baghouse, fabric filter, or equivalent control shall be observed by the permittee with a frequency of not less than once per day. The permittee shall keep a log of the observations from the process/control monitoring device.
- G. **Fuel Certification** - If using solid biomass fuel, the permittee shall obtain a certification from the fuel supplier with each shipment of solid biomass fuel. Each fuel supplier certification shall include the following:
- a. The name of the fuel supplier;
 - b. The potential sulfur emissions rate or maximum potential sulfur emissions rate of the fuel in ng/J heat input; and;
 - c. The method used to determine the potential sulfur emissions rate of the fuel.

Fuel sampling and analysis, independent of that used for certification, as may be periodically required or conducted by DEQ may be used to determine compliance with the fuel specifications stipulated in 9 VAC 5-520-190 E. Exceedance of these specifications may be considered credible evidence of the exceedance of emission limits.

- H. **Fuel Storage Tanks** – If the permittee retains fuel storage tanks on site to store distillate oil for co-firing, each storage tank shall not have a capacity greater than or equal to 75 cubic meters (m³) (19,812 gallons).
- I. **Dryers** – BLANK (If the Ad Hoc Group has suggestions or to see if these are out there)
- J. **Initial Testing** - Initial performance tests shall be conducted for all criteria pollutants (PM, PM-10, PM 2.5, NO_x, SO₂, CO, and VOC) and metal HAPs (all particulate compounds listed in 9 VAC 5-520-190 B) from the qualified energy generator stack to determine compliance with the emission limits contained in paragraph A of this section and hourly emission limits listed in 9 VAC 5-520-190 B. The tests shall be performed and demonstrate compliance within 60 days after achieving the maximum production rate at which the facility will be operated but in no event later than 180 days after start-up of the permitted facility. Tests shall be conducted and reported and data reduced as set forth in 9 VAC 5-50-30 and 9 VAC 5-60-30, and the test methods and procedures contained in each applicable section or subpart listed in 9 VAC 5-50-410 and 9 VAC 5-60-70. The details of the tests are to be arranged with the Regional Office. The permittee shall submit a test protocol at least 30 days prior to testing. One copy of the test results shall be submitted to the Regional Office within 60 days after test completion and shall conform to the test report format enclosed with this general permit.

Alternatively, the Regional Office may waive the requirement for testing if the permittee demonstrates by other means to the board's satisfaction that emissions from the

qualified energy generator are in compliance with the emission limits contained in paragraph A of this section and hourly emission limits listed in 9 VAC 5-520-190 B.

- K. **Initial Testing** - Concurrently with the initial performance tests as stated in paragraph C of this section, Visible Emission Evaluations (VEE) in accordance with 40 CFR Part 60, Appendix A, Method 9, shall also be conducted by the permittee on the qualified energy generator. Each test shall consist of 30 sets of 24 consecutive observations (at 15 second intervals) to yield a six minute average. The details of the tests are to be arranged with the Regional Office. The permittee shall submit a test protocol at least 30 days prior to testing. The evaluation shall be performed and demonstrate compliance within 60 days after achieving the maximum production rate at which the facility will be operated but in no event later than 180 days after start-up of the permitted facility. Should conditions prevent concurrent opacity observations, the Regional Office shall be notified in writing, within seven days, and visible emissions testing shall be rescheduled within 30 days. Rescheduled testing shall be conducted under the same conditions (as possible) as the initial performance tests. One copy of the test result shall be submitted to the Regional Office within 60 days after test completion and shall conform to the test report format enclosed with this general permit.
- L. **Continuous Testing** - Every three years and upon request by the DEQ, the permittee shall conduct:
- a. Additional performance tests for all criteria pollutants and metal HAPs from the qualified energy generator stack to demonstrate compliance with the emission limits contained in paragraph A of this section and hourly emission limits listed in 9 VAC 5-520-190 B. The details of the tests shall be arranged with the Regional Office; and
 - b. Additional visible emission evaluations from the qualified energy generator stack to demonstrate compliance with the visible emission limit contained in 9 VAC 5-520-190 D of this general permit. The details of the tests shall be arranged with the Regional Office.
- M. **On Site Records** - The permittee shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with this general permit. The content and format of such records shall be arranged with the Regional Office. These records shall include, but are not limited to:
- a. Monthly and annual consumption of each solid fuel used, calculated monthly as the sum of each consecutive 12-month period. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months.
 - b. Material Safety Data Sheets (MSDS) for each solid biomass fuel used.
 - c. All fuel supplier certifications.

- d. Operation and control device monitoring records for the pressure drop in the multicyclone, baghouse, fabric filter, or equivalent control as required in paragraph F of this section.
 - e. If the permittee retains fuel tanks on site, records of distillate oil stored in each tank, the period of storage, and the maximum true vapor pressure of each fuel during the respective storage period.
 - f. If the permittee has a wet scrubber, records of the flow through the wet scrubber and the pH of the scrubbing medium as required in paragraph C of this section.
 - g. Scheduled and unscheduled maintenance and operator training.
 - h. Results of all stack tests, visible emission evaluations, performance evaluations, and fuel sampling and analysis.
 - i. Boiler information including make, model, serial number, model year, and maximum rated capacity (in MMBtu/hr).
- N. **Semiannual Fuel Quality Reports** – The permittee shall submit fuel quality reports to the Regional Office, postmarked no later than the 30th day following the end of each semiannual period ending June 30th and December 31st. If no shipments of solid biomass fuel were received during the semiannual period, the fuel quality report shall consist of the dates included in the semiannual period and a statement that no solid biomass fuel was received during the semiannual period. If solid biomass fuel was received during the reporting period, the report shall include:
- a. The dates included in the semiannual period;
 - b. A copy of all fuel supplier certifications for all shipments of solid biomass fuel received during the reporting period, indicating the supplier, volume of shipment, sulfur content (weight percent) and date the shipment was received.
 - c. A signed statement from the owner or operator of the facility that the fuel supplier certifications represent all of the solid biomass fuel received during the reporting period.

Attachment 3

COMMONWEALTH OF VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

ADVISORY GROUP PROTOCOL

Establishment of a Group and Statutory Requirements

Regardless of how the use of a particular approach was determined, certain factors are a given with the use of any of the approaches.

First and foremost is that the membership of any group is at the discretion of the Department Director **and** the recommended membership of any group must be approved by the Director. Recommendations for membership are to be approved by the appropriate Division/Regional Director and submitted to the Policy Division Director for concurrence, after which the recommendation will be forwarded to the Deputy Director and Director for final approval. (Note the Public Participation Procedures provide that membership of an ad hoc advisory group included balanced representation.)

Recommendations and appointments for membership are to be person specific. For example, if VAMWA requests to be represented on the group, VAMWA must submit the name of an individual to sit at the table.

Department staff shall provide a summary or copies of the comments received in response to the NOIRA to the advisory group members.

All meetings of the group are public meetings. That means, notice of the meeting has to be given. Generally there are no specific time frames for advance notice of advisory group meetings. However, there is a statutory requirement to publish notice of all meetings in the Virginia Register. Notice is to be included on Department's web page, the Townhall and the Virginia Register (if timing permits). Notice is to include the name of the group; the date, time, place of the meeting; a short description of the purpose of the meeting; and the name, address, phone, fax and email information of the contact for the meeting. The notice should be emailed to the Regulatory Affairs Director and either the Public Affairs Director or a Division web master for appropriate posting and distribution at least 7 days in advance of the meeting to ensure timely posting of the meeting.

The Freedom of Information Act requires that minutes be prepared. That means, a summary of the meeting is to be prepared and provided to the Regulatory Affairs Director for posting to the Townhall. If the minutes must be approved by the group a draft of the minutes must be posted within 10 days after the meeting with a final posted

within 3 days of approval. If the minutes do not need to be approved by the group, the final must be posted within 10 days after the meeting. The minutes must include, but are not limited to, (i) the date, time and location of the meeting, (ii) the members of the public body recorded as present and absent, and (iii) a summary of the discussion on matters proposed, deliberated or decided, and a record of any votes taken. Minutes of advisory groups do not have to be officially approved by the group unless the group establishes that requirement.

Role of the Group

The purpose of the group is to assist in the development of a proposed regulation (see overriding principles of regulation development attached). This group has been formed to balance the concerns of all those interested in this particular regulation. All such concerns will be addressed by the group, and any group member is free to advance any opinion.

Department staff members appointed by the Director to serve on the group are also free to advance any opinion, but these opinions are not necessarily those of Department management. Generally, Department program staff responsible for development of the regulation will coordinate the group's activity, serve as facilitator, provide staff support, draft the regulation, and act as the group's liaison to Department management, the Board, EPA, and the Office of Attorney General. The Department may use other Department staff to facilitate groups working on difficult or controversial issues.

The role of the group is advisory only. The group's primary responsibility is to collaboratively contribute to a regulation that is in the best interests of the Commonwealth as a whole. Because the group represents many different interests, all members should expect to compromise in order to accomplish the group's mission.

The group's function is to make recommendations on a specific action. Neither the Department nor the Board is obligated to accept the group's recommendation.

If the group cannot reach consensus, the Department staff will present the differing opinions to Department management and the Board. (see What is Consensus attached)

Participation by Persons not on the Group

Because these types of group meetings are public meetings, any member of the public may attend and observe the proceedings. However, only group members have a seat at the table and only group members may actively participate in the discussions. Those persons not on the group are encouraged to work with the group members that have common interests to ensure their concerns are heard. For groups working on regulation, those persons not on the group also have an opportunity to be formally heard during the 60-day public comment period on the proposed regulation.

As warranted, the Department will provide a means for those persons not on the group to make their concerns known to the group to ensure full consideration of all issues surrounding the regulation in question, provided it is not disruptive to the meeting or does not inhibit the advancement of the work of the group. (One option is to allow for a specific time for interested persons to address the group at a designated time during the meeting. Another is to have an empty seat at the table. If an interested person desires to make a brief comment or raise an issue, he would come to the empty seat, be recognized in turn, make his statement and then return to the audience. Time limitations may be necessary in order to ensure all persons have an opportunity to address the group.)

When the Group is Finished

After the group makes its recommendations, Department staff managing the group will summarize the deliberations, outcomes and recommendations. Department management will then review and determine recommendations that will be sent to the Board prior to the meeting where the subject is scheduled for consideration.

Areas where the group was unable to reach consensus or where the Department's recommendation differs from the group's recommendation will be identified in the material sent to the Board. In turn, the Board will decide if the Department's recommendation should be modified before the proposed regulation is promulgated for public comment.

The documentation sent to the Board before the meeting will also be sent to members of the group. As with all other members of the public, members of the group are free to attend the meeting at which Department staff will present its recommendation, however, note that the Board will not receive comment at that time. Public comment will be received by the Board only after the proposed regulation has been promulgated for public comment.

After the Board approves the promulgation of the proposal, the proposed regulation will undergo executive review and then be published in the Virginia Register, marking the beginning of a 60-day comment period. During this period, any member of the public may comment on the proposed regulation. A member of the group, like any other member of the public, is free to express any opinion on the proposed regulation at this time, as well.

Department staff will review and consider all comments relevant to the subject regulation. The comments will be summarized and a Department response prepared. The Department may have a meeting with the group to review the public comment and Department response prior to finalizing the summary and response document for the Board. This summary and response document explains the Department's position on the comment (why the regulation was changed or was not changed). The document will be forwarded to the Board as part of the material for their review prior to final action.

If requested by the Board, copies of specific comments or documents referenced in those comments will be provided to each Board member. The summary and response document shall also be sent to those persons who provided comments during the 60-day comment period at least five (5) days before the meeting where Board action is planned and will be sent to all advisory group members.

At the Board meeting, Department staff will recommend final action by the Board. At that time public comment on the regulation will be accepted in accordance with the Board's Policy on Public Comment at Board meetings. (see applicable portion of policy attached)

Guidelines for Discussions

Listen with an open mind and heart - it allows deeper understanding and, therefore, progress.

Speak one at a time; interruptions and side conversations are distracting and disrespectful to the speaker. "Caucus" or private conversation between members of the audience and people at the table may take place during breaks or at lunch, not during the work of the group.

Be concise and try to speak only once on a particular issue, unless you have new or different information to share.

Simply note your agreement with what someone else has said if you feel that it is important to do so, it is not necessary to repeat it.

If you miss a meeting, get up to speed before the next one as the group cannot afford the luxury of starting over.

Focus on the issue, not the speaker - personalizing makes it impossible to listen effectively.

Present options for solutions at the same time you present the problems you see.

Stay positive; despairing of the group's inability to reach agreement will almost certainly make it so.

Turn off all beepers and cell phones; take or make all calls outside the room.

What is consensus?

Consensus means different things to different people - ranging from unanimity to a super-majority to an agreement among a group of people that the dissenters will simply bite their tongues and, essentially, agree not to disagree.

Most often in current practice in regulatory and public policy consensus-based processes, consensus is defined as a willingness of each member of a group to be able to say that he or she *can live with the decisions reached and will not actively work against them outside of the process*. This is not to say that everyone will be completely satisfied by the results of the process; in fact, it is anticipated that no one group or individual will be completely satisfied. It is recognized, however, that this process generally takes place within a political and practical environment which requires each participant to come prepared to negotiate in good faith around complex and sensitive issues.

Voting is contrary to a consensus-based process, but people may be asked to demonstrate their strength of feeling for or against a particular idea, and may be asked to help set priorities during the course of the process.

OVERRIDING PRINCIPLES OF REGULATION DEVELOPMENT FOR ADVISORY GROUPS ESTABLISHED TO ASSIST IN THE DEVELOPMENT OF REGULATIONS

Regulations adopted by the Board's must be within the boundaries established by statute, regulation or executive order for the development of regulations. Generally, the statutory authority is broad in that there is a basic statement for the adoption of regulations **necessary** to implement a program.

The public participation procedures adopted by Board require:

- a rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare.
- a statement of estimated impact.
- the beneficial impact the regulation is designed to produce.
- an explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.
- a description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.
- a discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement as to whether the agency believes that the proposed regulation is the least burdensome alternative to the regulated community that fully meets the stated purpose of the proposed regulation.

The Governor Executive Order provides for:

- only regulations that are necessary to interpret the law or to protect the public health, safety, or welfare shall be promulgated.
- agencies are to identify the nature and significance of the problem a regulation is intended to address, including, where applicable, the failure of private markets and institutions to adequately address the problem.
- agencies are to identify and assess available alternatives for achieving the goals of a regulation, including where feasible and consistent with public health, safety, and welfare:
- the use of information disclosure requirements, rather than regulatory mandates, so that the public can make more informed choices;
- the use of performance standards in place of mandating specific techniques or behavior; and
- the use of economic incentives to encourage the desired outcomes (such as user fees or marketable permits).
- regulatory development to be based on the best reasonably available scientific, economic, and other information concerning the need for, and consequences of, the intended regulation. Where feasible, agencies shall specifically cite such information in support of regulatory proposals.

- regulations to be designed to achieve their intended objective in the most cost-effective manner.
- regulations shall be clearly written and easily understandable by the individuals and entities affected.

Attachment 3

BOARD POLICY ON PUBLIC COMMENT AT BOARD MEETINGS

PUBLIC COMMENTS AT STATE AIR POLLUTION CONTROL BOARD MEETINGS:

The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for their consideration.

For **REGULATORY ACTIONS (adoption, amendment or repeal of regulations)**, public participation is governed by the Administrative Process Act and the Board's Public Participation Procedures. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period and one public meeting) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period and one public hearing). Notice of these comment periods is announced in the Virginia Register and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For **CASE DECISIONS (issuance and amendment of permits and consent special orders)**, the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. If a public hearing is held, there is a 45-day comment period and one public hearing. If a public hearing is held, a summary of the public comments received is provided to the Board for their consideration when making the final case decision. Public comment is accepted on consent special orders for 30 days.

In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, as well as general comments, at Board meetings in accordance with the following:

REGULATORY ACTIONS: Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for **final** adoption. At that time, those persons who participated in the prior proceeding on the proposal (i.e., those who attended the public hearing or commented during the public comment period) are allowed up to 3 minutes to respond to the summary of the prior proceeding presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

CASE DECISIONS: Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending

case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of this permit. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then, in accordance with § 2.2-4021, allow others who participated in the prior proceeding (i.e., those who attended the public hearing or commented during the public comment period) up to 3 minutes to exercise their right to respond to the summary of the prior proceeding presented to the Board. Those persons who participated in the prior proceeding and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes or 15 minutes, whichever is less. New information will not be accepted at the Board meeting. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

PUBLIC FORUM: The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than pending regulatory actions or pending case decisions. Anyone wishing to speak to the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentation to not exceed 3 minutes.

NEW INFORMATION will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in **rare** instances new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who participated during the prior public comment period **shall** submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. For a regulatory action should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, an additional public comment period may be announced by the Department in order for all interested persons to have an opportunity to participate.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond,

Virginia 23218, phone (804) 698-4378; fax (804) 698-4346; e-mail:
cindy.berndt@deq.virginia.gov.